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### RESEARCH ARTICLE

#### PATRIARCHAL STAIN IN CONSTITUTIONAL FABRIC: USE OF DISCRIMINATORY PHRASEOLOGY TO DESCRIBE A WOMEN

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#### Abstract

Women empowerment and gender equality cannot be attained if the protective laws and empowering mechanisms reek of patriarchal notions and stereotypes. There is an urgent need of reassessing the ideology from a constructive angle which goes beyond the popular approach of "woman as a victim of her gender". The idea must be redirected in attaining a larger goal of social security for all distressed humans as compared to the charity-like support bestowed under the assumption that women are "helpless" and are in need of extra protection.

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#### The Dangerous Ideology of Patriarchy & Gender Roles

Patriarchy is defined by "rule of father or man".<sup>1</sup> According to Sharmon Lynnette Monagan, "the most commonly accepted definition of patriarchy is the social structure of society based on the father having primary responsibility for the welfare of and authority over their families".<sup>2</sup>

In the 21st century we may not find the formal presence of Patriarchy because of the laws that protect and recognize women's rights globally. Nonetheless, the social environment still reeks of feudal and patriarchal mentality. We live in a society where gender roles are defined based on shared myth and human imagination of rights, duties, and responsibilities.<sup>3</sup> Male identity is based on cultural myths of a designated masculine role such as being the provider or a protector. Similarly, female identity is based on a designated feminine role such as getting married, raising a child and being obedient to her husband; women are someone in need of protection or even special treatment while men are someone whose responsibility is to provide protection.<sup>4</sup> There is a certain assumption about women which distinguishes women from men; this distinction places women inferior to that occupied by men in our society.<sup>5</sup>

<sup>1</sup> Robert Bahlieda, 'The Legacy of Patriarchy' The Democratic Gulag : Patriarchy, Leadership & Education (2015) 488 online available at <[https://www.jstor.org/stable/45136330?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/45136330?seq=1#metadata_info_tab_contents)>.

<sup>2</sup> SharmonLynnetteMonagan, 'Patriarchy : Perpetuating the Practice of FemaleGenital Mutilation' (2010) 2 (1) Journal of Alternative Perspectives in the Social Sciences.

<sup>3</sup> Yuval Noha Harari 'There is no Justice in History' *Sapiens* (2014) 149.

<sup>4</sup> Laura Sjoberg, Women as wartime rapist : Beyond sensation and stereotyping online available at <<https://www.jstor.org/stable/j.ctt1bj4r7q>>.

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Patriarchy is dangerous because it classifies women as a separate variable based on sex. Such classification is indicative of the statute of putting women at a lower pedestal than men.<sup>6</sup> Patriarchal ideology is based on widely accepted values, beliefs, myths and justification of an act which is morally considered to be acceptable amongst the majority of the population.<sup>7</sup> When an ideology is popular amongst the majority, it helps in maintaining an unjust social order and inequality by convincing people that existing social hierarchy of gender and social arrangement is naturally designed and acceptable natural order.<sup>8</sup> When an ideology dominates humankind, the society becomes oppressive and intolerant. This is because the ideology gives importance to rigid belief over rational thoughts and reasoning.<sup>9</sup> As soon as ideology transforms into personal belief, one gets disconnected from reality.<sup>10</sup> Thereby causing tension and rift in the society.<sup>11</sup>

### CEDAW and Gender Stereotyping

United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) pledges for adoption of policies to eliminate discrimination against women.<sup>12</sup> Nepal is a party to this agreement.<sup>13</sup> Nepal as a signing member has pledged to eliminate the practices that are based on the idea of inferiority or superiority of either of the sexes or on stereotyped roles for men and women. Yet the traces of misogyny normalized by patriarchal mindset, which categories women as a second-class citizen can be seen all around. A prime example being the discriminatory citizenship law not allowing women to pass on citizenship to her offspring.<sup>14</sup> Many esteemed scholars and human rights activists in Nepal have raised this concern. In this article we attempt to explore a deeper cause of the issue.

### Excerpts and Analysis of Constitution of Nepal in the light of Women empowerment and Social Security Law

We look up to the constitution for non-discrimination and a guarantee of equal treatment. The Constitution has the potential of disrupting existing social structure leading to hierarchical relations based on gender. It is absolutely necessary for the constitution to be empowering in both policy and in phraseology. But a deeper inspection shows this isn't the case. Woven into the very fabric of the constitution, in the language and phrasing used therein, we can see language that reeks of gender discrimination and stereotype. Article 51 (j) (1) (Part 4 of Constitution of Nepal, 2015) provides policies relating to social justice and inclusion.<sup>15</sup> The article states, "*to keep on making appropriate arrangements for the livelihoods of the **helpless single women**, while according priority to them in employment on the basis of skills, competency and qualification*". Section 3 of The Social Security Act, 2018 of Nepal provides list

<sup>5</sup> Jacob Gershman, 'The Case That Helped Define Ruth Bader Ginsburg's Gender Equality Fight' *The Wall Street Journal* (19 Sep 2020) online available at <<https://www.wsj.com/articles/the-case-that-helped-define-ruth-bader-ginsburgs-gender-equality-fight-11600557049>>.

<sup>6</sup> Nadine Puechguirbal, 'Discourses on Gender, Patriarchy and Resolution 1325 : A Textual Analysis of UN Documents' (2010).

<sup>7</sup> Bahlheda (n1).

<sup>8</sup> Ibid.

<sup>9</sup> Albert Camus, 'The Legacy of Patriarchy' (2015) 488 *The Democratic Gulag: Patriarchy, Leadership & Education*

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No 19' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies' (29 July 1994) UN Doc HRI/GEN/1/Rev.1 Online available at <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>> "*In its preamble, the Convention explicitly acknowledges that "extensive discrimination against women continues to exist" and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity"*.

<sup>13</sup> Signature: 1991, Ratification/Accession: 1991 Online available at <<https://indicators.ohchr.org/>>.

<sup>14</sup> Binod Ghimire, 'Women rights organisations urge Human Rights Council to take up issue of women's equality in citizenship rights' *The Kathmandu Post* (Kathmandu, July 12 2020) online available at <<https://kathmandupost.com/national/2020/07/12/women-rights-organisations-urge-human-rights-council-to-take-up-issue-of-women-s-equality-in-citizenship-rights>>.

<sup>15</sup> The Constitution of Nepal, 2015 online available at <<http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/constitution/constitution-of-nepal>>.

of person who are entitled to social security allowance: (a) Senior citizens, (b) Indigent, (c) Incapacitated and helpless persons, (d) **Helpless single women**, (e) Citizens with disabilities, (f) Children, (g) Citizens unable to take care themselves.<sup>16</sup>

### **Stereotyping Language and Marginalization**

One may argue, the provision itself is meant for upliftment of women. Furthermore, owing to the fact that women face socio - economic, education and political disadvantages in our society due to old age patriarchy and oppressive régimes they are more likely to live in poverty than men. So why question the protective measures and mechanisms that are trying to help and empower women ? The answer lies in the use of phraseology to describe a single woman i.e. helpless. We can see that only a single woman can be helpless as far as the statute is concerned. Somehow due to the patriarchal mind-set it is only woman who will be helpless and never a man. We are not to assume even for a moment that such phraseology undermines a woman. That a well-intended mechanism of women empowerment and the social protection program itself reeks of patriarchy. It may solve the monetary or situational problem that a woman faces, but it by its mere wording keeps perpetuating patriarchy and gender disparity which is dangerous for the long run calling her “helpless”.

We must understand that, measures of protection can be a core mechanism for oppression of women when provided with special treatment.<sup>17</sup> Because special treatment more often than not marginalises women by forcing the patriarchal vision of society through the legislation and policy.<sup>18</sup> Such marginalisation subconsciously perpetuates patriarchal and feudal mentality amongst the citizens and disempowers women. The law and policy makers must realise that women need protection from societal customs, practise and their rigid ideology which lays its emphasis on vulnerability of women instead of concentrating on their capabilities.

It has been observed that, this provision classifies women as a separate variable when the provision already mentions “incapacitated and helpless persons”. Why are men never classified as separate variable based on sex? Anthropologists and decision makers alike use various variables for classification based on sex, age, disability, or ethnicity.<sup>19</sup> Some classification-based hierarchy makes sense such as the difference between a minor and an adult or senior citizen. On the other hand, when there is classification based on gender, especially woman being labelled as “helpless” is indicative of the statute putting women at a lower pedestal than men. This is a clear sign of age-old oppressive patriarchy and discrimination based on stereotypical expectations, attitudes, and behaviours towards women. Research literature tells us that:

*“each time we use sex as a sociological variable, we implicitly accept the fact that women belongs to a separate category, are treated like a minority and are in a position of inferiority relative to a masculine norm of reference used to define social phenomena from their male vantage points”.*<sup>20</sup>

Therefore, sex classifications imply a judgment of inferiority; due to which women face discrimination in the private and public sphere. As a result, they are more likely to live in poverty than men.

### **Social Security Law and Gender Sensitivity**

Finally, a major underlying problem is the absence of gender sensitivity while designing the social security law and protection programs. We fail to realise that “helplessness”, “suffering” and “destitution” is not only a “single women” centric issue and that dependency and security issues see no gender while wreaking havoc. Every distressed member of society has a right to social security and protection. Therefore, social security laws must address the individual’s distress without any gender bias involved in the process. Careful attention is required to not let patriarchal concepts of women being the “weaker sex” perpetuate either through articulation in; or, the very nature of a policy. Research shows us that:

<sup>16</sup> The Social Security Act, 2018 Online available at <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/the-social-security-act-2075-2018>.

<sup>17</sup> Sylvia A, ‘Rethinking Sex and the Constitution’ (1948) 132(5) University of Pennsylvania Law Review.

<sup>18</sup> Puechguirbal (n6).

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

*“there is a potential to promote women empowerment and eradicate poverty, when gender-sensitive considerations are taken into account while designing and implementing a social security laws and policy”.*<sup>21</sup>

Right to social security in developing countries is greatly associated with eradication of poverty, elimination of social insecurity and advancement of gender equality.<sup>22</sup> Therefore, the objective of social security and protection programs can only be justified in developing countries with more egalitarian laws and policies promoting gender equality.<sup>23</sup>

### **Elimination of Gender Stereotyping**

Stereotyping and discriminatory provision keep perpetuating in a patriarchal society by seeping into the fabric of legislation, keeping women in a lower pedestal. A report published by Office of the United Nations High Commissioner for Human Rights (OCHR) states that, *“how traditional attitudes by which women are regarded as subordinate to men perpetuate widespread practice involving violence and coercion”.*<sup>24</sup> Nepal being a signatory of CEDAW is obligated to take all the measures to modify “harmful gender stereotypes” and “eliminate wrongful gender stereotyping” which regards women in a subordinate position. This has been recognised to be an essential and important step in women empowerment, gender equality, upliftment of human rights and overall development of the country internationally. Even a range of human rights mechanisms have highlighted and taken active steps to remove or abolish any stereotyping language about women incorporated in the legislation or textbooks.<sup>25</sup>

### **Conclusion**

Our Constitution aims to ensure gender equality. It is the institution which fights against oppression and discrimination. We must also note that it is the Constitution which has the potential of disrupting existing social structure leading to hierarchical relations based on gender. The constitution needs to be feminist to uphold gender equality in policy and phrasing.<sup>26</sup> We must ask, is our constitution feminist enough? If not, then the first step is modifying harmful and wrong languages which stereotypes women and second step is modifying the provision which marginalises women and treats them as a second-class citizen.

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<sup>21</sup> Raquel Tebaldi, ‘Gender-sensitive social protection systems in Brazil and Africa: Opportunities for South Cooperation’ (2017) 14(1) The International Policy Centre for Inclusive Growth United Nations Development Programme online available at <[https://ipcig.org/pub/eng/PIF38\\_Social\\_protection\\_towards\\_gender\\_equality.pdf](https://ipcig.org/pub/eng/PIF38_Social_protection_towards_gender_equality.pdf)>.

<sup>22</sup> Social security for social justice and a fair globalization (2011) International Labour Conference, 100th Session online available at <<https://www.ilo.org/ilc/ILCSessions/previous-sessions/100thSession/on-the-agenda/social-protection/lang--en/index.htm>>.

<sup>23</sup> Mildred T. Mushunje, ‘Gender and social protection: policy implications’ (2017) 14(1) The International Policy Centre for Inclusive Growth United Nations Development Programme online available at <[https://ipcig.org/pub/eng/PIF38\\_Social\\_protection\\_towards\\_gender\\_equality.pdf](https://ipcig.org/pub/eng/PIF38_Social_protection_towards_gender_equality.pdf)>.

<sup>24</sup> OHCHR commissioned report on ‘Gender stereotypes and Stereotyping and women’s rights’ (2014) online available at <[https://www.ohchr.org/documents/issues/women/wrgs/onepagrs/gender\\_stereotyping.pdf](https://www.ohchr.org/documents/issues/women/wrgs/onepagrs/gender_stereotyping.pdf)>.

<sup>25</sup> Ibid.

<sup>26</sup> Reva B. Seigel, “Text in contest : Gender and the Constitution from a Social Movement Perspective” (2002) 150 (297) University of Pennsylvania Law Review.